

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MICHAEL J. MCPARTLAND, pro se,

Plaintiff,

-vs-

Case No. 3:08 CR 208  
3:11 CV 2476

UNITED STATES OF AMERICA,

O R D E R

Defendant.

KATZ, J.

This matter is before the Court on the issue of a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

The issuance of a certificate of appealability is not a matter of right. Such certificate may issue only if the applicant has made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. 2253(c)(2). This statute codifies the standard set forth by the United States Supreme Court in *Barefoot v. Estelle*, 463 U.S. 880, 892-93 (1982), that “probable cause [for an appeal] requires something more than the absence of frivolity and that the standard is higher than the one of the ‘good faith’ requirement of [28 U.S.C.] § 1915.”

Obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues in a different manner; or that the questions are “adequate to deserve further encouragement to proceed further.” *Id.*

In a Memorandum Opinion and Order, issued December 12, 2011, this Court determined the following: (1) Petitioner’s § 2255 motion was untimely; (2) Based upon the negotiated plea agreement, Petitioner waived his right to appeal or contest his sentence; and (3) Petitioner’s

motion failed on the merits. (Doc. No. 37.) As such, there is no basis for granting a certificate of appealability in this particular case.

For these reasons, the Court finds no certificate of appealability shall issue.

IT IS SO ORDERED.

s/ David A. Katz  
DAVID A. KATZ  
U. S. DISTRICT JUDGE